

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

05 - 10002 RCL

Civil Action No.

ERIC RICHARDS,

Plaintiff,

v.

BRACEBRIDGE CAPITAL L.L.C., JAMES DIBIASE  
and NANCY ZIMMERMAN,

Defendants

MAGISTRATE JUDGE [Signature]VERIFIED COMPLAINT AND  
DEMAND FOR TRIAL BY JURY

RECEIPT #

AMOUNT \$ 120SUMMONS ISSUED YES

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DPTY. CLK. [Signature]DATE 1/3/05INTRODUCTION

Eric Richards, a disabled employee, was terminated from his office position with defendant asset management company, Bracebridge Capital, L.L.C., shortly after he severely injured his back and requested reasonable accommodations. The stated reason for Plaintiff's termination – i.e. that he was unwilling or unable to perform the essential elements of his job – is demonstrably pretextual. Defendant's unlawful conduct is evidenced, inter alia, by the following facts:

- explicit admissions that defendant acted based on complaints of coworkers' that Mr. Richards was becoming a "burden"
- explicit admissions by defendant that one of the reasons Mr. Richards was terminated was because he availed himself of a reasonable accommodation in the form of stretch breaks
- a deceptive and calculated effort to manufacture an "essential job function" in order to fire Mr. Richards for not being able to meet it.
- failure to provide legally required accommodations which would have permitted Mr. Richards to continue to perform his job

- unilateral revocation of previously granted reasonable accommodations and addition of job responsibilities inconsistent with said accommodations.

### PROCEDURAL BACKGROUND

Plaintiff initiated this action by filing a Charge of Discrimination at the Massachusetts Commission Against Discrimination (“MCAD”) on or about March 28, 2003. The Charge was cross-filed with the Equal Employment Opportunity Commission (“EEOC”). Plaintiff received leave from the MCAD on January 2, 2004 to remove the action to Superior Court pursuant to M.G.L. c. 151B §9. Plaintiff first received a Right to Sue Letter from the EEOC in October, 2004 when his counsel obtained a copy from the agency.

This action seeks relief under the Americans with Disabilities Act (“ADA”), 42 U.S.C. §12101 et seq. and Mass. Gen. Laws. Chapter 151B (“Chapter 151B”). This Court has jurisdiction pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1367.

### PARTIES

1. Plaintiff Eric Richards (“Mr. Richards”) is an individual residing in Winchester, Middlesex County, Massachusetts.

2. Defendant Bracebridge Capital L.L.C. (“Bracebridge”), on information and belief, is a limited liability company organized under the laws of the Commonwealth of Massachusetts, with a principal place of business located at One Bow Street, Cambridge, Middlesex County, Massachusetts, and employing in excess of twenty-five employees.

3. Defendant James DiBiase (“Mr. DiBiase”) is a Massachusetts resident who served at all relevant times as Chief Operating Officer of Bracebridge.

4. Defendant Nancy Zimmerman ("Ms. Zimmerman") is a Massachusetts resident who served at all relevant times as Manager or Chief Executive Officer of Bracebridge. Ms. Zimmerman was one of the individuals for whom Mr. Richards worked.

#### STATEMENT OF FACTS

5. Mr. Richards was employed as an analyst at defendant Bracebridge from approximately August 2002 until his abrupt termination in February 2003. The termination occurred shortly after he requested reasonable accommodation following an injury that exacerbated his chronic degenerative disk condition and in the wake of an emergency medical absence.

6. Since the termination, defendants have provided pretextual justifications for their decision to terminate Mr. Richards - namely that Mr. Richards underperformed. Mr. Richards, however, never received a negative evaluation and was told he was performing well. In fact, Mr. Richards received a bonus.

7. In terminating Mr. Richards, defendant DiBiase told Mr. Richards that he was becoming a burden for defendant Bracebridge. Further, DiBiase told Mr. Richards that he took too many stretch breaks.

8. DiBiase previously told Mr. Richards that other employees were bothered by the accommodations provided to him.

9. Prior to the termination, Richards requested a short leave of absence to rehabilitate his back. Defendant DiBiase denied the request, stating that Bracebridge did not have a short-term leave policy.

10. Shortly before he was terminated Mr. Richards became extremely ill at work and sought emergency medical care.

11. Apparently as a means for setting up the termination, defendants instructed Mr. Richards to have his doctor to fill out a FMLA form. Along with the FMLA form, DiBiase gave Richards a job description that ostensibly applied to Mr. Richards' position at Bracebridge. This job description, however, was not the same job description Mr. Richards had been provided prior to applying for the job at Bracebridge. The section entitled "Essential Functions of the Position" was newly inserted. This section included the requirement that the employee "be able to sit at desk and perform duties on a computer during normal business hours" and "perform duties at [Bracebridge]".

12. While FMLA did not apply to Mr. Richards, he did as his employer requested and submitted the form to his doctor. His doctor returned the form to the defendants.

13. Soon thereafter, Bracebridge terminated Richards' employment. On information and belief, defendant Zimmerman approved the decision to terminate Mr. Richards' employment.

14. Bracebridge did not terminate Mr. Richards for performance reasons, but rather, inter alia, because he was disabled and the company no longer desired to accommodate his disability.

15. As a direct result and foreseeable consequence of the defendants' unlawful conduct, Mr. Richards has suffered significant anxiety, loss of enjoyment of life, loss of income and employment benefits, loss of business and professional reputation, other financial losses, mental anguish and emotional distress.

**COUNT I – ADA AND CHAPTER 151B**  
**HANDICAP DISCRIMINATION – ACTUAL DISABILITY**

16. The plaintiff Richards incorporates the allegations made in paragraphs 1-15 as if fully set forth herein.

17. Defendant Bracebridge, through the actions of its agents and employees acting within the scope of their employment, and defendant DiBiase individually, unlawfully terminated Richards because of his disabilities; specifically a degenerative, chronic back condition that had caused Richards to utilize reasonable accommodations such as stretch breaks. Among other unlawful considerations, Defendants acted, inter alia, out of concern that Richards' disability would require him to continue to need reasonable accommodations.

**COUNT II – ADA AND CHAPTER 151B**  
**HANDICAP DISCRIMINATION – PERCEIVED DISABILITY**

18. The plaintiff Mr. Richards incorporates the allegations made in paragraphs 1-17 as if fully set forth herein.

19. Defendant Bracebridge, through the actions of its agents and employees acting within the scope of their employment, and defendant DiBiase individually, unlawfully terminated Richards because they perceived him to be disabled. Defendants acted, inter alia, out of concern that Richards would require additional accommodations for medical reasons.

**COUNT III – ADA AND CHAPTER 151B**  
**HANDICAP DISCRIMINATION – REFUSAL TO  
PROVIDE REASONABLE ACCOMMODATION**

20. The plaintiff Mr. Richards incorporates the allegations made in paragraphs 1-19 as if fully set forth herein.

21. Defendant Bracebridge, through the actions of its agents and employees acting within the scope of their employment, and defendant DiBiase individually, unlawfully refused to provide required reasonable accommodations that would have permitted Richards to perform his job.

**COUNT IV – ADA AND CHAPTER 151B**  
**HANDICAP DISCRIMINATION – TERMINATION TO AVOID FUTURE  
REASONABLE ACCOMMODATION OBLIGATIONS**

22. The plaintiff Mr. Richards incorporates the allegations made in paragraphs 1-21 as if fully set forth herein.

23. Defendant Bracebridge, through the actions of its agents and employees acting within the scope of their employment, and defendant DiBiase individually, unlawfully terminated Richards in order to evade the possibility of being required to provide further reasonable accommodations. In order to avoid this legal obligation, Defendants abruptly terminated Richards upon learning from his doctor that his need for accommodation may extend for a period of time.

**COUNT V – ADA AND CHAPTER 151B**  
**HANDICAP DISCRIMINATION – RETALIATION**

24. The plaintiff Richards incorporates the allegations made in paragraphs 1-23 as if fully set forth herein.

25. Defendant Bracebridge, through the actions of its agents and employees acting within the scope of their employment, and defendant DiBiase individually, unlawfully retaliated against Richards by terminating him in retaliation for his requests for reasonable accommodation.

**RELIEF REQUESTED**

WHEREFORE, plaintiff Eric Richards requests this Court award him the following relief:

1. Enter judgment in his favor against the defendants in an amount warranted by the evidence at trial;

2. Compensatory damages for lost wages and benefits, anxiety, inconvenience, humiliation, mental anguish, and emotional and physical distress and other consequential damages caused by the unlawful acts of defendants;
3. Punitive and exemplary damages in an amount sufficient to deter future unlawful conduct by these and other defendants and to punish these defendants;
4. An order of injunctive relief requiring training and education of defendants' managers concerning their duties and responsibilities under the ADA and Chapter 151B;
5. Attorneys' fees and costs of this action (including expert witness fees); and
6. Such other and further relief as this Court deems just and proper.

**JURY DEMAND**

**THE PLAINTIFF DEMANDS A TRIAL BY JURY  
AS TO ALL COUNTS OF THE COMPLAINT**

Respectfully submitted,  
ERIC RICHARDS,  
By his attorneys,

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Paul Holtzman, Esq.  
BBO No. 563184  
Emily R. Daughters, Esq.  
BBO No. 647114  
KROKIDAS & BLUESTEIN LLP  
600 Atlantic Avenue  
Boston, MA 02210  
(617) 482-7211

DATED: January 3, 2005

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**VERIFICATION**

I, Eric Richards, plaintiff in this action, hereby state under penalty of perjury that I have read the foregoing Verified Complaint and Jury Demand, and that its allegations are true, and that those stated upon information and belief, I believe to be true.

Signed under the penalties of perjury this 30<sup>th</sup> day of December 2004.

  
Eric Richards

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Eric Richards vs Bracebridge Capital LLC
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
- N/A
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Paul HoltzmanADDRESS Krokidas & Bluestein LLP, 600 Atlantic Avenue, Boston, MA 02210TELEPHONE NO. (617) 482-7211

JS 44 (Rev. 3/99)

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Eric Richards

(b) County of Residence of First Listed Plaintiff Middlesex  
(EXCEPT IN U.S. PLAINTIFF CASES)

**DEFENDANTS**

Bracebridge Capital, LLC  
James DiBiase and Nancy Zimmerman

County of Residence of First Listed Middlesex  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number) (617)  
Paul Holtzman (BBO #563184) 482-7211  
Emily R. Daughters (BBO #647114)  
Krokidas & Bluestein LLP  
600 Atlantic Ave., Boston, MA 02210

Attorneys (If Known) (617)  
Jay Shepherd, Esq. 439-4200  
Shepherd Law Group, P.C.  
99 Summer Street, Suite 910  
Boston, MA 02110-1248

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ DEF 1 Incorporated or Principal Place of Business in This State ☐ 4 ☒ DEF 4  
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury Med. Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RS1 (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609	

**V. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify) \_\_\_\_\_  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.)

Do not cite jurisdictional statutes unless diversity.)

Americans with Disabilities Act, 42 U.S.C. Sec. 12101 et seq. Disability Discrimination.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE